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SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

NO. 859

JACOB J. GREENWALD,

Appellant,

vs.

STATE OF MARYLAND,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE, TO AFFIRM AND BRIEF IN SUPPORT THEREOF

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Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, respectfully moves this Honorable Court to dismiss the above entitled appeal or, in the alternative, to affirm the judgment of the Court of Appeals of Maryland on the ground that the appeal fails to present any substantial federal question.

OPINION BELOW

The opinion of the Court of Appeals is reported in 221 Md. 235, 155 A. 2d 894. A companion case where the Appellant was convicted of conspiracy is *Greenwald v. State*, 221 Md. 245, 157 A. 2d 119.

STATEMENT

This is a direct appeal from the judgment of the Court of Appeals of Maryland the opinion of which was filed on November 23, 1959. After a motion for reargument was denied and the opinion modified, the mandate of the Court was issued on January 12, 1960. The Court of Appeals affirmed the judgment of the Circuit Court for Talbot County.

Jacob J. Greenwald, the Appellant, a practicing physician, had been indicted by the Grand Jury of Cecil County, Maryland, on forty-two charges of unlawfully and knowingly making material false statements to the effect that he had physically examined certain named female persons and that he had found them to be pregnant when, in fact, the females named had not been physically examined and were not pregnant, for the purpose of assisting them in obtaining a marriage license. Forty-three other indictments charged the Appellant with unlawful conspiracy to commit the offenses; however, this Honorable Court is not concerned with those indictments in the present case.

Judge Horney, writing the opinion for the Court of Appeals of Maryland, states the following facts:

> "The facts are not controverted. On February 6, 1958, a boy, who was then under eighteen, went to Elkton in the company of a boy friend and their respective girl companions for the purpose of getting married. The boy went to the clerk's office and made application for a marriage license. After the application had been made he went by taxicab to the defendant's office with the other boy. The girls did not accompany them. The defendant was at his desk and as they approached him he stated that he understood their girls were pregnant. They replied in the affirmative, which was untrue so far as the boy's bride-to-be was concerned, but may have been correct so far as the

prospective wife of the boy friend was concerned. When asked by the defendant, both boys informed him that the girls were three and one-half months pregnant. The defendant also inquired as to the girls' names and residences. When this information had been supplied, the defendant filled out two certificates and gave them to the boys. The certificate given to each boy certified that the defendant had examined his girl companion and had found her to be three and one-half months pregnant. The entire visit to the office lasted about five minutes. Four days later, the boy went to the clerk's office again, gave the clerk the pregnancy certificate he had received from the defendant and procured a marriage license on the basis of the certificate. The boy and girl were married the same day."

On October 10, 1958, the case was removed to Talbot County, Maryland where the Appellant was found guilty as charged and was sentenced to be confined in the Maryland Penitentiary for a period of three (3) years.

On appeal to the Court of Appeals of Maryland the Appellant contended that Section 11(b) of Article 62, Annotated Code of Maryland (1957 Edition) did not apply to unsworn statements and further that if it did, then it was unconstitutional. He further contended in the Court of Appeals of Maryland that even if the section applies to unsworn statements and is constitutional, the Appellant should have been punished under Section 11(a) of Article 62 and that his Motion to Dismiss the indictment which was filed in the trial court should have been granted because the indictment was defective for the reason that it failed to allege willfulness. The Maryland Court of Appeals found that these contentions were without merit and, therefore, affirmed the judgment of the trial court in convicting the Appellant.

ARGUMENT

The decision of the Court of Appeals of Maryland is Clearly Correct and No Substantial Federal Question Is Presented in the Appeal.

The Appellant contends that Section 11(b) of Article 62, Annotated Code of Maryland (1957 Edition) violates his rights under the United States Constitution in that this section is inapplicable to unsworn statements and that there was no perpetration of the crime of perjury. In the Court of Appeals of Maryland he further contended that this section was unconstitutional due to the fact that it was vague and indefinite. The marriage laws of Maryland require the assent of the parent or guardian if the girl is under sixteen or the boy is under eighteen. As to the marriage of minors the law provides that a marriage license may be issued without the required consent if the putative father is over sixteen, on the certificate of a licensed physician presented with the application for the marriage license to the effect that the girl is pregnant or has given birth to a child. Section 11(b) of Article 62, which the Appellant was convicted of violating, provides as follows:

> "*False statement.* — Any person who shall knowingly make any material false statement to procure, or to assist any other person to procure, any license or marriage ceremony in violation of the provisions of this Article * * * shall be guilty and punished for perjury."

The indictment in this case did not specifically state that this was a violation of Section 11(b); however, it is obvious from reading the indictment in this case that the indictment was based on Section 11(b) and the trial court in its charge so advised the jury.

The general law is that the Legislature has the power to define what Acts shall constitute criminal offenses and what penalties shall be inflicted on offenders and generally to enact all laws deemed necessary for the protection of public and private rights. 14 Am. Jur., *Criminal Law* 16. However, its power must be exercised subject to constitutional guarantees of due process of law. The Maryland Legislature, in enacting Section 11 of Article 62, supra, provided by the terms of Section 11(a) that violations of Sections 9 and 10 were misdemeanors subject to a fine of $25.00 to $250.00, but at the same time by the terms of Section 11(b) the Maryland Legislature created an offense analogous to perjury prohibiting the making of a material false statement in connection with the procuring of a marriage license or ceremony and then as the Court of Appeals of Maryland stated "* * * provided an oath-substitute, which though novel, is not prohibited". The term "oath" is defined in Black's Law Dictionary, 4th Edition as:

> "any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully."

Vaughn v. State, 146 Tex. Cr. R. 586, 177 S.W. 2d 59, 60. See also 3 Bouv. Law Dictionary, p. 2388 (8th Edition, 1914).

The courts in construing legislation should accord the language used by the Legislature to the ordinary and natural meaning wherever possible. In reading the statute in question, the language used leaves little doubt that the certificate of the physician would not be under oath or affidavit and if the same be false the party making the false statement is to be prosecuted and punished as for perjury. The terms of Section 11(b) are clear and definite and the statute provides in precise terms that the doing of certain

acts is a crime. The statute is sufficiently explicit to enable a person of ordinary intelligence to ascertain with a fair degree of precision what it prohibits and what conduct on his part will render him liable to its penalties. A statute is not violated for indefiniteness merely because it exacts the burden of rightly estimating a matter of degree or because juries may differ in their judgments in cases involving the same state of facts. *United States v. Petrillo*, 332 U.S. 1, 7; 91 L. Ed. 1877; *McGowan v. State*, 220 Md. 117, 151 A. 2d 156. In the ordinary everyday sense the word "certificate" is understood to simply mean a written statement giving testimony of the truth of any fact. *California Employment Commissioner v. Malin* (Calif.), 138 Pac. 2d 744 and *Dolan v. United States*, 133 Fed. 441. The Court of Appeals of Maryland in *Greenwald v. State*, 221 Md. 235, 240, 155 A. 2d 894, pointed out that the legislative history of Section 11(b) unerringly points to the fact that the word "of"* was inadvertently omitted from the statute, but with or without the absent word there can be no doubt that the offense condemned by the statute as stated above is in the nature of perjury.

It is obvious from what has been said that there is no reason why the Maryland Legislature could not remove the requirement of an oath and provide a non-oath substitute. The Maryland Legislature has done this several times before, for example, Article 2B, Section 198 (false statement under Alcoholic Beverage laws), Article 81, Section 5 (false report required by Revenue and Tax laws); and Article 85A, Sections 13, 17 (false statement of employees under sedation and subversive laws).

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* When the omitted word is restored, the statute provides that offenders thereof "shall be guilty (of) and punished for perjury."

The Appellant also contends that he should have been sentenced under Section 11(a) of Article 62, supra, since it imposed a lesser penalty than does Section 11(b). Section 11(a) reads as follows:

> "Any person violating the provisions of Secs. 8 and 10 shall be guilty of a misdemeanor and upon conviction thereof, shall be subject to a fine of not less than $25.00 and not more than $250.00."

Section 11(a) applies only to violations of the provisions of Sections 9 and 10 other than those constituting the making of material false statements. Wherever possible the provisions of a statement should be read together and given their true meaning. If the Maryland Legislature intended that Section 11(a) apply as the punishment for making material false statements there would have been no need for them to enact the provisions of Section 11(b). The two sections of the same statute were not intended to act as punishment for the same acts or offenses committed under the statute but were intended to apply to different violations under the same statute. There could be no violations other than the making of false statements under Sections 9 and 10 and they would be punishable under Section 11(a), while a person who knowingly makes a material false statement to procure a marriage license would be punished under Section 11(b) as in this case. Therefore, we submit it is clear that the statute did not provide different penalties for the same offense.

We submit that the decision of the Court of Appeals of Maryland, in affirming the conviction of the Appellant, is clearly correct and no substantial federal question is presented in this appeal.

CONCLUSION

It is respectfully submitted that, for the foregoing reasons, the Appellee's Motion to Dismiss the Appeal, or in the alternative to affirm the Judgment of the Court of Appeals of Maryland, should be granted.

Respectfully submitted,

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